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**Dynatech Specialty Services, Inc. and International Association of Heat & Frost Insulators & Asbestos Workers, Local 86.** Case 26–CA–21827

February 10, 2005

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by the Union on August 19, 27, and October 8, 2004, respectively, the General Counsel issued the complaint on October 25, 2004, against Dynatech Specialty Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act.<sup>1</sup> The Respondent failed to file an answer.

On November 23, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On November 29, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by November 8, 2004, all the allegations in the complaint could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November 9, 2004, notified the Respondent that unless an answer was received by November 15, 2004, a motion for default judgment would be filed.

<sup>1</sup> The complaint was sent to the Respondent at the Respondent's regular place of business by certified mail. The Respondent, however, did not claim this item. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited there. In any event, the complaint was also served by certified mail on the Respondent's owner, Nancy Collier, and the General Counsel submitted a copy of the postal return receipt card.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and place of business in Gordonsville, Tennessee (the Respondent's facility), has been engaged in the demolition and installation of insulation at various jobsites, including Arnold Air Force Base in Tullahoma, Tennessee (the Arnold AFB jobsite) and Rhodia Foods Specialty Phosphates in Nashville, Tennessee (the Rhodia jobsite).

During the 12-month period ending September 30, 2004, the Respondent, in conducting its business operations described above, has been engaged in installing insulation for the United States Air Force at its Arnold AFB jobsite valued in excess of \$50,000. Based on these business operations, the Respondent has a substantial impact on the national defense of the United States.

During the 12-month period ending September 30, 2004, the Respondent, in conducting its business operations described above, purchased and received at the Respondent's facility goods valued in excess of \$50,000 directly from points located outside the State of Tennessee and sold and shipped from its facility goods valued in excess of \$50,000 directly to points located outside the State of Tennessee.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Association of Heat & Frost Insulators & Asbestos Workers, Local 86 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Mike Collier	Owner
Nancy Collier	Owner
Brian Collier	Supervisor
Mark Collier	Supervisor

The Respondent, by Mike Collier, on or about July 29, 2004, at a restaurant in the Gordonsville, Tennessee area, interrogated a job applicant about whether he was a un-

ion member and threatened a job applicant that he would not hire applicants who supported a union.

The Respondent, by Mark Collier, on or about August 12, 2004, at the Rhodia jobsite, interrogated a job applicant about his union sympathies.

The Respondent, by Brian Collier:

(a) On or about July 30, 2004, at the Arnold AFB jobsite, interrogated an employee about his union sympathies.

(b) On or about August 9, 2004, at the Rhodia jobsite, instructed an employee to report on the union activities of other employees, and implied that an employee who supported the Union would be discharged.

(c) On or about August 10, 2004, at the Rhodia jobsite,

(1) instructed an employee to inform him if other employees discussed the Union at the jobsite;

(2) orally promulgated a rule prohibiting employees from talking about the Union while at the jobsite;

(3) informed employees on two occasions that talking about the Union at any time was prohibited;

(4) informed an employee that he was being terminated because of his union activities;

(5) threatened an employee with retaliation because the employee engaged in union activities;

(6) told employees that another employee was discharged because of his union activities;

(7) informed an employee not to speak to union members at any time;

(8) requested employees to report union activity at the jobsite to management;

(9) interrogated a job applicant about his union sympathies;

(10) twice impliedly threatened employees with physical violence because of union activities;

(11) told an employee that he was going to discharge an employee because of his union activities;

(12) threatened an employee with retaliation if the employee engaged in union activities.

(d) On or about August 13, 2004, at the Rhodia jobsite, informed employees that another employee would be removed from the jobsite because of his union activities; threatened an employee that if he returned to the jobsite he would be arrested because of his union activities; and informed an employee that he was being terminated because of his union activities.

On or about August 10, 2004, the Respondent discharged its employee Roger Cathey.

On or about August 13, 2004, the Respondent discharged its employees Reynold Paul Carey and Tim Clapper.

The Respondent discharged employees Cathey, Carey, and Clapper because they joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

#### CONCLUSIONS OF LAW

1. By the interrogations, threats, and other statements to employees at the Arnold AFB and Rhodia jobsites between July 29 and August 13, 2004, set forth above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By discharging employees Roger Cathey, Reynold Paul Carey, and Tim Clapper because they joined and assisted the Union and engaged in concerted activities, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Roger Cathey, Reynold Paul Carey, and Tim Clapper, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed. We also shall order the Respondent to make Cathey, Carey, and Clapper whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files all references to the unlawful discharges of Cathey, Carey, and Clapper, and to notify them in writing that this has been done and that the discharges will not be used against them in any way.

#### ORDER

The National Labor Relations Board orders that the Respondent, Dynatech Speciality Services, Inc., Gordonsville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge, retaliation, or physical violence because they support the International Association of Heat & Frost Insulators & Asbestos Workers, Local 86, or any other labor organization, and engage in union activities.

(b) Interrogating job applicants about their union membership and sympathies.

(c) Interrogating employees about their union membership and sympathies.

(d) Threatening job applicants by telling them that it would not hire applicants who supported a union.

(e) Instructing employees to report on the union activities of other employees or to inform it if other employees discuss the Union at the jobsite.

(f) Informing employees that they or other employees are being terminated because of their union activities.

(g) Promulgating a rule prohibiting employees from talking about the Union while at the jobsite.

(h) Telling employees that talking about the Union at any time is prohibited or that they are not to speak to union members at any time.

(i) Informing employees that another employee would be removed from the jobsite because of his union activities.

(j) Threatening employees that if they return to the jobsite they would be arrested because of their union activities.

(k) Discharging employees because they join or assist a union, or engage in concerted activities.

(l) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Roger Cathey, Reynold Paul Carey, and Tim Clapper full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make Roger Cathey, Reynold Paul Carey, and Tim Clapper whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharges of Roger Cathey, Reynold Paul Carey, and Tim Clapper, and within 3 days thereafter, notify them in writing that this has been done, and that the unlawful discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Gordonsville, Tennessee, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 29, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 10, 2005

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Robert J. Battista, Chairman

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Wilma B. Liebman, Member

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Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discharge, retaliation, or physical violence because you support the International Association of Heat & Frost Insulators & Asbestos Workers, Local 86, or any other labor organization, and engage in union activities.

WE WILL NOT interrogate job applicants about your union membership and sympathies.

WE WILL NOT interrogate you about their union membership and sympathies.

WE WILL NOT threaten job applicants by telling them that we will not hire applicants who supported a union.

WE WILL NOT instruct you to report on the union activities of other employees or to inform us if other employees discuss the Union at the jobsite.

WE WILL NOT inform you that you or other employees are being terminated because of their union activities.

WE WILL NOT promulgate a rule prohibiting you from talking about the union while at the jobsite.

WE WILL NOT tell you that talking about the Union at any time is prohibited or that you are not to speak to union members at any time.

WE WILL NOT inform you that another employee would be removed from the jobsite because of his union activities.

WE WILL NOT threaten you that if you return to the jobsite you would be arrested because of your union activities.

WE WILL NOT discharge you because you join or assist a union, or engage in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Roger Cathey, Reynold Paul Carey, and Tim Clapper full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make Roger Cathey, Reynold Paul Carey, and Tim Clapper whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharges of Roger Cathey, Reynold Paul Carey, and Tim Clapper, and, WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful discharges will not be used against them in any way.

DYNATECH SPECIALTY SERVICES, INC.